
Montana Judicial Branch
Montana Department of Natural Resources and Conservation
Water Court Adjudication Funding
FY2016 – FY2021

☐ **Current status of adjudication account**

- In 2007, \$25 million in general fund moved to a water adjudication account
- Fund rules and caps established in 85-2-280, MCA
- 2009 Legislature moved \$2 million from the account to the natural resources operation account
- Projected fund balance at the end of FY2015 - **\$2.7 million**

☐ **Issues**

- Funding not adequate to complete adjudication or to continue work beyond FY2015 at current levels
- FY2016 cap within 85-2-280, MCA (\$1 million each year) is inadequate to continue budgets at current levels and continue meeting adjudication benchmarks
- With current funding and the current statutory caps, the adjudication process would slow and eventually end in FY2017

☐ **Funding Needed FY2016-FY2021:**

- Approximately \$14.6 million for both DNRC and Water Court activities
- Projected Water Court adjudication budgets range from \$1.3 million to \$1.7 million per year by FY2021
- Projected DNRC adjudication budgets range from \$1.6 million to \$1.8 million per year by FY2021
- Adjudication continues to shift to the Water Court but the DNRC still provides a vital role in assisting the court

☐ **Options:**

- Replenish the funding in the adjudication account with a one-time-only general fund transfer
 - Amend 85-2-280, MCA to remove the \$1 million cap effective FY2015; provide general fund transfer with legislative change
 - Require benchmarks regarding the adjudication process
- Submit HB2 budget proposals from the Judicial Branch and the Executive Branch – not preferred: bifurcates the funding and significantly reduces flexibility

Attachment: Legislative Fiscal Division analysis of water adjudication fund issues

WATER POLICY INTERIM
COMMITTEE. 2013-14

The Water Court is supported entirely by state special revenue from the renewable resources grant and loan account and the water adjudication account. Legislation passed by the 2007 Legislature (HB 473 of the regular session) transferred \$25.0 million from the general fund to the state special revenue account for adjudication of water rights claims. The following figure shows the projected fund balance for the Water Adjudication Fund through the end of the 2015 biennium and is based on the Governor's request.

Department of Natural Resources and Conservation Water Adjudication Fund (02431)				
	Actual FY 2012	Appropriated FY 2013	Executive Request FY 2014 FY 2015	
Beginning Balance	\$15,084,895	\$12,337,073	\$9,207,109	\$5,946,176
Expenditures				
Judiciary - Water Court	637,171	897,925	1,087,322	1,079,050
DNRC - Water Resources	1,902,059	2,082,984	1,923,406	1,926,458
DNRC - Centralized Services	270,975	204,055	300,205	291,878
Total Expenditures	\$2,810,205	\$3,184,964	\$3,310,933	\$3,297,386
Revenues	61,236	55,000	50,000	45,000
Adjustments	1,147	0	0	0
Ending Balance	\$12,337,073	\$9,207,109	\$5,946,176	\$2,693,790

Potential Funding Issues for Water Adjudication

In order for Montana to defend its water use from demands from other states and Canada, it must have water right decrees in place. To expedite this process, the 2005 Legislature passed HB 22 requiring the Department of Natural Resources and Conservation to complete claims examination by June 30, 2015. The Water Court would have an additional five years to finish the process by issuing preliminary or temporary preliminary decrees by June 30, 2020.

The program was initially funded by a water right fee deposited to the water adjudication fund. However, in the 2007 Legislative Session the fee was eliminated and the fund was provided a \$25.0 million transfer from the general fund. According to 85-2-280, MCA, the fund was to be sufficient to finish the on-the-ground work and fund the Water Court until FY 2020. However, estimates show that at the end of FY 2015, the water adjudication fund will have less than \$2.7 million to fund the remaining work of issuing and enforcing decrees. If allocations are made up to the limit allowed in law the projected balance of \$2.7 million would be insufficient to fund the \$5.3 million in expenditures for the five years of fiscal years 2016 through 2020. Refer to the following LFD Issue for further details.

Water Adjudication Fund Appropriation Limits

The legislature established limits in statute on expenditures for the Water Adjudication Program from fiscal years 2006 through 2020. The intent of these limitations was to allow the fund to be used for adjudication activities and to ensure funding would last for the duration of the adjudication period, including the five years of estimated Water Court work after the on-the-ground portion has been completed. The limit is based on an allocation of \$2.6 million in FY 2006 with annual increases tied to the inflation assumptions of the revenue estimating resolution. Beginning July 1, 2015, the limit is reset to \$1.0 million for FY 2016 with annual increases tied to the inflation factor of the revenue estimating resolution.

The following figure compares the actual, appropriated, and requested amounts with the statutory limit that has been inflated 3 percent per year. As shown, the statutory limit is exceeded in FY 2008 through FY 2011 and again in FY 2014. The cumulative effects are not negative until FY 2010 because expenditure levels in FY 2006 and FY 2007 were less than the statutory amount. The cumulative amount increased dramatically in FY 2010 when approximately \$2.0 million was transferred to the natural resources operations fund to assist with a funding shortage.

Department of Natural Resources and Conservation Water Adjudication Fund Statutory Limit and Disbursements				
Fiscal Year	Limit	Disbursements	Difference	Cummulative
2020	\$1,125,509	\$1,125,509	\$0	(\$2,126,651)
2019	1,092,727	1,092,727	0	(2,126,651)
2018	1,060,900	1,060,900	0	(2,126,651)
2017	1,030,000	1,030,000	0	(2,126,651)
2016	1,000,000	1,000,000	0	(2,126,651)
2015	3,392,410	3,297,386	95,024	(2,126,651)
2014	3,293,602	3,310,933	(17,331)	(2,221,675)
2013	3,197,672	3,184,964	12,708	(2,204,344)
2012	3,104,536	2,810,205	294,331	(2,217,052)
2011	3,014,113	3,504,904	(490,791)	(2,511,383)
2010	2,926,323	5,090,920	(2,164,597)	(2,020,592)
2009	2,841,090	3,193,938	(352,848)	144,005
2008	2,758,340	2,784,071	(25,731)	496,853
2007	2,678,000	2,437,545	240,455	522,584
2006	2,600,000	2,317,871	282,129	282,129

It is projected that at the end of FY 2015 the Water Court would have approximately \$2.8 million to complete five years of work. The amount could be different depending on the amount of interest earned and the actual expenditures from the fund. At issue is whether the proposed executive budget will negatively impact the legislature's ability to fund the Water Court's completion of issuance and enforcement of decrees after on-the-ground work is completed by DNRC. To address this issue, the legislature would need to reduce the amount of funding coming from the water adjudication fund or find another source of revenue for the fund.

This same issue was raised during the 2011 Legislature. The legislature passed SJ 26 that recommended monitoring of the Water Court by the Legislative Finance Committee during the interim. The Water Court and the Department of Natural Resources and Conservation reported at each interim meeting of the Environmental Quality Council providing the status of the water adjudication process. As of July 31, 2012, 51,419 water rights claims have been examined since July 2005. By the end of June 2015, 5,581 claims remain to be examined, which equates to 10% of the claims remaining to be examined in the remaining 30% of time allotted. This claims examination progress compares favorably to the statutory benchmark of having 44,000 claims examined by December 31, 2012. The favorable claims examination progress also reduces the risk of falling short on funding for the program. If the program continues to remain ahead of the statutory schedule, the funding for later years work may not be needed and the legislature may not need to address the projected deficit in program funding.

Please refer to the narrative for the Water Resource Division in the Department of Natural Resources and Conservation, for further discussion of options that the legislature could consider to mitigate the amount of funding coming from the water adjudication account or supply the account with another source of revenue.